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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,493	08/13/2001	Albert Honey Perdon	60136.0157US01	7921
23552 7590 08/28/2009 MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			EXAMINER SALL, EL HADJI MALICK	
			ART UNIT 2457	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/928,493	Applicant(s) PERDON ET AL.	
	Examiner EL HADJI M. SALL	Art Unit 2457	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5-7, 9-12, 14-23, 26-28, 30-33, 35, 36, 39, 41-44, 46, 47, 50-52 and 54-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims pending in the application are 1,2,5-7,9-12,14-23,26-28,30-33,35,36,39,41-44,46,47,50-52 and 54-57.

DETAILED ACTION

1. This action is responsive to the amendment filed on June 3, 2009. Claims 3-4, 8, 13, 24-25, 29, 34, 37-38, 40, 45, 48-49, 53 and 58 are cancelled. Claims 1-2, 5-7, 9-12, 14-23, 26-28, 30-33, 35-36, 39, 41-44, 46-47, 50-52 and 54-57 are pending. Claims 1-2, 5-7, 9-12, 14-23, 26-28, 30-33, 35-36, 39, 41-44, 46-47, 50-52 and 54-57 represent predicting the activities of an individual or group using minimal information.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-12, 14-33, 35-44 and 46-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz U.S. 6,029,195 in view of Rooney U.S. 6,819,669 further in view of Goykhman U.S. 20020174134.

Herz teaches the invention substantially as claimed including system for customized electronic identification of desirable objects.

As to claim 1, Herz teaches a method of predicting the behavior of a current user of an interactive service, comprising the steps of:

Identifying activities of the current user engaging with interactive television service (column 32, lines 32-39; column 1, lines 17-21; see abstract);

Accessing a first collection of data comprising data associated with:

(i) cumulative activities in which other users have participated, (ii) conditions surrounding such other users' cumulative activities, and (iii) patterns of behavior associated with the cumulative activities of the other users and the conditions surrounding the cumulative activities of the other users in the cumulative activities (column 3, lines 39; column 6, lines 22-25), wherein the cumulative activities include viewing interactive television programming (column 90, lines 10-22);

Comparing identified activities and surrounding conditions of the current user with cumulative activities and surrounding conditions of the other users to identify similarities therebetween (column 7, lines 9-18);

identifying a patterns of behavior associated with the identified similarity of activities and surrounding conditions between the current user and the other users (column 7, lines 9-18)

Attributing to the current user the identified pattern of behavior as a future behavior of the current user (column 48, lines 49-57).

Herz fails to teach explicitly a set top box.

However, Rooney teaches a set top box (column 3, lines 64-66).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Herz in view of Rooney to incorporate a set top box. One would

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be motivated to do so to allow the user to interact with the programs shown on the television set (column 3, lines 65-66).

Herz and Rooney fail to teach explicitly amount of time the current user participated in each of the identified activities.

However, Goykhman teaches computer-user activity tracking system and method. Goykhman teaches amount of time the current user participated in each of the identified activities (paragraph [0043]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Herz and Rooney in view of Goykhman to provide conditions surrounding each of the identified activities, including amount of time the current user participated in each of the identified activities; and condition surrounding the cumulative activities of the other users, including amount of time that each other user participated in each respective activity in order to allow monitoring and tracking the activities of a user of a computer (abstract).

Herz fails to teach explicitly monitoring activity associated with a set top box of a current user engaging with the interactive television service/

However, Rooney teaches monitoring activity associated with a set top box of a current user engaging with the interactive television service (column 3, line 59 to column 4, line 2, Rooney discloses the set-top box 104 as an electronic device allowing (i.e. "monitoring activity associated with the user") the user (i.e. "current user") to interact with the programs shown on the television set 102 (i.e. "engaging with the interactive television service")).

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It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Herz in view of Rooney to provide monitoring activity associated with a set top box of a current user engaging with the interactive television service in order to a reduction of a peak load caused by the recipients' response messages (abstract).

As to claim 2, Herz teaches the method of claim 1, wherein
the identifying step further comprises identifying personal attributes of the current user; the first collection of data further comprises data associated with personal attributes of the other users (column 4, line 58); and
the comparing step further comprises comparing the personal attributes of the current user with the personal attributes of the other users to identify the similarities (column 7, lines 9-18).

As to claim 5, Herz teaches the method of Claim 1, wherein the first collection of data is based on activities the other users participated while engaged with the interactive television service (column 34, lines 33-45).

As to claim 6, Herz teaches method of claim 1, wherein the other users are unrelated individual persons (column 30, lines 47-49).

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As to claim 7, Herz teaches the method of claim 1, wherein the other users are members of a group and the current user is identifiable as a potential member of that group (column 48, lines 45-49).

As to claim 9, Herz teaches the method of claim 1, further comprising the step of: periodically updating the first collection of data to reflect the other users' ongoing participation in additional activities (column 5, lines 28-30).

As to claim 10, Herz teaches the method of claim 9, wherein the step of periodically updating occurs in real time, during the current user's engagement with the interactive service (column 5, lines 28-30).

As to claim 11, Herz teaches the method of claim 1, further comprising:

accessing a second collection of data associated with:

(i) a plurality of activities that are available via the interactive television service and (ii) information about each of the plurality of available activities distinguishing the activity from other of the plurality of the available activities (column 34, lines 33-45; column 90, lines 10-22),

wherein the step of attributing includes selecting, from the plurality of available activities and based on the second collection of data, one or more activities in which the current user is most likely to participate during the engagement with the interactive television service (column 90, lines 10-22; abstract).

As to claim 12, Herz teaches the method of claim 1, wherein the interactive television service is accessed through the Internet, the activities of the current user and the cumulative activities of the other users include visits to Internet web sites, and the first collection of data includes further comprises data associated with:

- (i) an identity of each other user (column 1, lines 40-42; abstract),
- (ii) types of Internet web sites that each other user has visited (column 7, lines 30-35),
- (iii) content of each type of Internet web site visited by each other user (column 32, lines 32-39).

Herz and Rooney fail to teach explicitly amount of time spent.

However, Goykhman teaches amount of time spent (paragraph {0043}).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Herz and Rooney in view of Goykhman to provide amount of time spent at each type of Internet web site by each other user in order to allow monitoring and tracking the activities of a user of a computer (abstract).

As to claim 14, Herz teaches the method of claim 12, further comprising the step of:

periodically updating the first collection of data to reflect the other users' visits to additional Internet web sites (column 5, lines 28-30).

As to claim 15, Herz teaches the method of claim 14, wherein the step of periodically updating occurs in real time, during the current user's engagement with the interactive television service (column 5, lines 28-30).

As to claim 16, Herz teaches the method of claim 12, further comprising:
accessing a second collection of data comprising data associated with:

(i) a plurality of types of Internet web sites that are available for the current user to visit and

(ii) information about each of the plurality of types of Internet web sites distinguishing the type from others of the plurality of types of Internet web sites (column 7, lines 30-47); and

wherein the step of attributing includes selecting, from the plurality of Internet web sites, one or more types of Internet web sites which the current user is most likely to visit during the engagement with the interactive television service (column 87, lines 46-53).

Claims 17-23, 26-28, 30-33, 35-36, 39, 41-44, 46-47, 50-52 and 54-57 do not teach or define any new limitations above claims 1-10 and therefore are rejected for similar reasons.

Response to Arguments

4. Applicant's arguments filed on 06/03/09 have been fully considered but they are not persuasive.

(A) Applicants argue that Herz fails to suggest monitoring activity associated with a set top box of a current user engaging with the interactive television service. Herz does not even mention set top boxes or the monitoring of activity associated with a set top box

In regards to the point (A), Examiner respectfully disagrees.

Herz was not used to teach such limitation. Furthermore, in column 3, line 59 to column 4, line 2, Rooney discloses the set-top box 104 as an electronic device allowing (i.e. "monitoring activity associated with the user") the user (i.e. "current user") to interact with the programs shown on the television set 102 (i.e. "engaging with the interactive television service"). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Herz in view of Rooney to provide monitoring activity associated with a set top box of a current user engaging with the interactive television service in order to a reduction of a peak load caused by the recipients' response messages (abstract).

(B) Applicants argue that Herz also fails to suggest that the set top box identifies activities of the current user engaging with the interactive television service.

In regards to the point (B), Examiner respectfully disagrees.

Herz was not used alone to address this limitation. In column 90, lines 10-22, Herz discloses users with common interest interacting with or jointly viewing TV ("the current user engaging with the interactive television service"), and simultaneously

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watching a popular program ("identified activity"). Herz fails to teach explicitly a set-top box. However, Rooney teaches a set top box (column 3, lines 64-66). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Herz in view of Rooney to incorporate a set top box. One would be motivated to do so to allow the user to interact with the programs shown on the television set (column 3, lines 65-66).

(C) Applicants argue that Herz also fails to suggest identifying the amount of time the current user participated in each of the identified activities associated with the set top box.

In regards to the point (C), Examiner respectfully disagrees.

Such limitation was not taught by Herz. In paragraph [0043], Goykhman discloses the elapsed time the user spends on the selected activity. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Herz and Rooney in view of Goykhman to provide conditions surrounding each of the identified activities, including amount of time the current user participated in each of the identified activities; and condition surrounding the cumulative activities of the other users, including amount of time that each other user participated in each respective activity in order to allow monitoring and tracking the activities of a user of a computer (abstract).

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(D) Applicants argue that Herz further fails to suggest accessing a data associated with cumulative activities associated with a set top box of other users, conditions surrounding the cumulative activities associated with a set top box of the other users, and patterns of behavior associated with the cumulative activities associated with a set top box of the other users and the conditions surrounding the cumulative activities associated with a set top box of the other users.

In regards to the point (D), Examiner respectfully disagrees.

Just like in point (C), such limitation was not taught by Herz alone. In 90, lines 10-22, Herz discloses users with common interest interacting with or jointly viewing TV, and simultaneously watching a popular program. Herz fails to teach explicitly a set-top box. However, Rooney teaches a set top box (column 3, lines 64-66). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Herz in view of Rooney to incorporate a set top box. One would be motivated to do so to allow the user to interact with the programs shown on the television set (column 3, lines 65-66).

(E) Applicants argue that Herz fails to suggest identifying a pattern of behavior associated with the identified similarity of activities and surrounding conditions associated with a set top box of the user and the set top box of the other users. Herz is directed to determining frequency of words in a particular document relative to all documents.

In regards to the point (E), Examiner respectfully disagrees.

In column 7, lines 9-18, Herz discloses The system further includes a profile processing module which estimates each user's interest in various target objects by reference to the users' target profile interest summaries, for example by comparing the target profiles of these target objects against the search profiles in users' search profile sets, and generates for each user a customized rank-ordered listing of target objects most likely to be of interest to that user. Each user's target profile interest summary is automatically updated on a continuing basis to reflect the user's changing interests.

(F) Applicants argue that Herz also does not attribute to the current user the identified pattern of behavior as a future behavior of the current user.

In regards to the point (F), Examiner respectfully disagrees.

In column 48, lines 49-57, Herz discloses Any of the well-known pre-fetching methods that collect and utilize aggregate statistics on past user behavior, in order to predict future user behavior, may then be implemented in so as to collect and utilize a separate set of statistics for each cluster of users. In this way, the system generalizes its access pattern statistics from each user to similar users, without generalizing among users who have substantially different interests.

(G) Applicants argue that Herz, Rooney and Goykhman, alone or in combination, fail to disclose, teach or suggest the invention as defined in independent claims 1, 17, 22, 35 and 46, as amended.

In regards to the point (G), Examiner respectfully disagrees.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, one would be motivated to do so to allow the user to interact with the programs shown on the television set (in column 3, lines 65-66 of Rooney), to allow monitoring and tracking the activities of a user of a computer (abstract of Goykhman), and to provide a reduction of a peak load caused by the recipients' response messages (abstract of Rooney).

Conclusion

5. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

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In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to El Hadji M Sall whose telephone number is 571-272-4010. The examiner can normally be reached on 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 571-272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/El Hadji M Sall/

Examiner, Art Unit 2457

/Salad Abdullahi/

Primary Examiner, Art Unit 2457